

## **REMARKS**

This Application has been reviewed in light of the Office Action mailed August 23, 2006. At the time of the Office Action, Claims 1-9, 11, 12 and 21-25 were pending in this Application. Claims 1-9, 11, 12 and 21-25 were rejected. Claims 1 and 11 have been amended to further define various features of Applicants' invention. Claims 21-23 have been cancelled without prejudice or disclaimer. Also, Claim 26 has been added. Applicants respectfully request reconsideration and favorable action in this case.

### **Rejections under 35 U.S.C. § 102**

Claims 1-9, 11-12 and 21-25 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,156,056 issued to Kearns et al. ("Kearns"). Applicant respectfully submits that Kearns does not anticipate the rejected Claims because Kearns does not show all the elements in the Claims

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

In this instance, with respect to Claim 1, Kearns does not disclose a second radially expanded configuration at a point along the longitudinal axis. Kearns teaches bending or curving the elongate device. In contrast, Claim 1 recites that the apparatus has a larger cross section at a point along said longitudinal axis of the device. In a sense, a cross-sectional slice of the claimed apparatus in the second configuration is radially larger than that in the first configuration.

Kearns does not radially enlarge the cross section of the apparatus. A cross sectional slice of the Kearns device appears to remain relatively constant.

In connection with Claim 11, Kearns does not disclose slits extending longitudinally along the apparatus. The slits in Kearns extend in a lateral direction as opposed to a longitudinal direction.

Based on the foregoing, Applicant respectfully requests reconsideration and withdrawal of the Section 102 rejections.

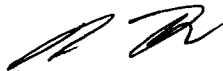
**CONCLUSION**

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above.

Also, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 408.735.6323.

Respectfully submitted,



Richard R. Batt  
Reg. No. 43,485

Date: \_\_\_\_\_

2/23/07

ArthroCare Corporation  
680 Vaqueros Avenue  
Sunnyvale, California 94085-3523  
408.735.6323 | phone  
408.530.9143 | fax  
CUSTOMER NO. **21394**